

## REMARKS

Favorable reconsideration of the above-identified application is respectfully requested in view of the following remarks.

Claim 4 is canceled by this amendment. Thus, Claims 1-3 and 5-22 are currently pending in this application, with Claims 1, 8 and 12 being the only independent claims.

### Objections to the specification

On page two of the Official Action an issue regarding Claim 12 is raised. Claim 12 has been amended without changing the scope of the claim to address this issue.

### Claim rejections

The Official Action rejects Claims 1, 2 and 4-9 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,651,429 to *Ljungberg et al.*; Claim 3 under 35 U.S.C. § 103(a) as being unpatentable over *Ljungberg et al.* in view of U.S. Patent No. 4,153,996 to *Rutty*; Claim 10 under 35 U.S.C. § 103(a) as being unpatentable over *Ljungberg et al.* in view of U.S. Patent No. 4,938,430 to *Chapin*; Claims 11-21 under 35 U.S.C. § 103(a) as being unpatentable over *Ljungberg et al.* in view of U.S. Patent No. 4,927,092 to *Ingram, II et al.*; and Claim 22 under 35 U.S.C. § 103(a) as being unpatentable over *Ljungberg et al.* in view of *Ingram, II et al.* and further in view of *Chapin*.

***Rejections under 35 U.S.C. §102(b)***

Claims 1 and 8 have been amended to generally define that the switch has a length greater than two times the radius of a fully spooled measuring blade.

Specifically: Claim 1 now defines a tape measure having, among other features, a switch having a length greater than two times a radius of the measuring blade when fully spooled; and Claim 8 now defines a tape measure having, among other features, a pivot switch having a length greater than two times a radius of the measuring blade when fully spooled.

*Ljungberg et al.* does not disclose the length of the switch being greater than two times a radius of the measuring blade when fully spooled. Instead, *Ljungberg et al.* shows a tape measure having a spooled tape 6, and an operating member 22 that is clearly less than two times the radius of the fully spooled tape 6. See Fig. 1. Therefore, *Ljungberg et al.* does not disclose the feature generally directed to a switch having a length greater than two times the radius of a measuring blade when fully spooled together as defined by present Claims 1 and 8 together with the other claimed features.

Further, *Ljungberg et al.* does not teach or suggest lengthening the operating member 22. *Ljungberg et al.* only discloses that to create a braking force on the tape 6, it is necessary to deform the tape 6 into grooves 14, 15 of vertical flanges 12, 13, thereby generating a compression force sufficient to brake the tape. The operating member 22 only moves the locking member 17 into and out of contact with the upper part of the tape 16 and there is no indication that the size of the operating member 22 relates to the force necessary to brake the tape 6. Therefore, one would not have

been directed to modify the length of the operating member 22 to be greater than two times the radius of a fully spooled tape as defined by Claims 1 and 8.

Claims 2, 5-7 and 9 depend from Claims 1 and 8, and are therefore allowable at least for the reasons stated above with respect to Claims 1 and 8.

Claims 7 and 8 are also allowable at least because they define that the switch is located and sized so that it is operable to engage or disengage the brake with the thumb or finger of a user's hand, and subsequently is operable to disengage or engage the brake by use of a heel or palm of the user's hand without changing grip.

In contrast, the tape measure disclosed in *Ljungberg et al.* shows the operating member 22 being located on the front portion of the housing. It is known that when operating a tape measure of the kind disclosed in *Ljungberg et al.*, that the user's palm is placed on the part of the housing that is distal to the surface being measured, so as to make it easy to hold/press the tape measure against the surface to be measured. As the operating member 22 is located at the front of the housing, it would have been apparent to one skilled in the art that the user's palm is placed on the housing adjacent to the operating member 22 while the user's fingers operate the operating member 22, and that this positioning does not allow operation of the operating member 22 with the user's finger or thumb, and subsequently operating the operating member with the user's heel or palm without changing grip as defined by Claims 7 and 8. Thus, *Ljungberg et al.*'s tape measure is not configured to be operable as defined by Claims 7 and 8. Should this rejection be maintained, it is respectfully requested that it be explained how *Ljungberg et al.* discloses a tape measure that is configured to be operable as defined by Claims 7 and 8, or that this rejection be withdrawn.

***Rejections under 35 U.S.C. §103(b)***

An noted above, The Official Action proposes that Claims 11-21 are disclosed or suggested by *Ljungberg et al.* in view of *Ingram, II et al.* This proposition is inaccurate for at least the following reasons.

There would have been no motivation to modify or combine the breaking mechanism disclosed by *Ljungberg et al.* to include features of the breaking mechanism disclosed in *Ingram, II et al.* at least because *Ljungberg et al.*'s braking mechanism and *Ingram, II et al.*'s braking mechanism are entirely different in both configuration and operation and there would have been no likelihood of successfully combining features of one with the other.

For example, the mechanism in *Ljungberg et al.* toggles the operating member 22 between a locking and an un-locking positing. The toggling shifts a sliding member 21 attached to a locking member 17 between two portions 25, 26 of a V-shaped groove 25. As the sliding member 21 is toggled between a locked and an un-locked position, the different depths of the portions 25, 26 pull against or released the locking member 17 from the top of the tape 6.

In contrast, *Ingram, II et al.*'s mechanism is constantly biased toward the locking position. An arm 24 is constantly biased against the tape 12 by a biasing arm 32 pressing against a tab 34, and the arm 24 is only raised from the tape 12 when a wedge 30 is forced inward by pressing the sides 14a, 14b.

Thus, as the braking mechanisms of *Ljungberg et al.* and *Ingram, II et al.* are totally different types of locking mechanisms with different parts and different operations for locking, there would have been no apparent likelihood of successfully combining their features, and one skilled in the art therefore would not have been

motivated to combine locking features of *Ingram, II et al.* with the tape measure disclosed in *Ljungberg et al.*

Also, even if there were somehow a motivation to modify *Ljungberg et al.* to include features of *Ingram, II et al.* as suggested in the Official Action, still not all the features of the claimed invention would be disclosed by such a combination.

For example, Claims 11 and 12 define a feature generally directed to a push-pull member. Neither *Ljungberg et al.* nor *Ingram, II et al.* disclose a push-pull member. *Ljungberg et al.* only discloses a locking member 17 that acts to pull on either the operating member 22 or the tape 6. *Ingram, II et al.* does not disclose any part that could be considered to be a push-pull member as defined by the claims. The biasing arm 30, the arm 24 and the wedge 30 of *Ingram, II et al.* all push. Thus, at least the feature directed to a push-pull member as defined by the claims is not disclosed by *Ljungberg et al.* or *Ingram, II et al.*

The Official Action also rejects Claim 3 as being unpatentable over *Ljungberg et al.* in view of *Rutty*. Claim 3 defines that the axis about which the switch is pivotal lies in a position between approximately one third and one half of the way along the length of the switch. The Official Action notes that *Ljungberg et al.* discloses every feature defined by Claim 3 except that noted above, and proposes that this deficiency is remedied by *Rutty*. This proposition is not accurate for at least the following reasons.

*Rutty* would not have directed one to modify *Ljungberg et al.* to include this feature. *Rutty* shows the location of the pivot only in Figure 1, and the corresponding description does not relate any significance to the location of the pivot point. Further, it is not taught or disclosed that there is any significance to the positioning of the

pivot point, or that the location of the pivot point should be altered. Therefore, one skilled in the art would not have been directed to modify the position of the pivot point in *Ljungberg et al.* to be in a position between approximately one third and one half of the way along the length of the switch as defined by Claim 3. Should this rejection be maintained, it is respectfully requested that the next Official Action explain how *Rutty* would have directed one to modify the operating member 22 to include this feature, or that the rejection be withdrawn.

Also, there would have been no motivation to modify *Ljungberg et al.* to include the switch of *Rutty* because the object of *Rutty* is to provide a tape measure with a blade lock combined in one device thereby minimizing the number of components. In contrast, the claimed invention is concerned with improving a friction braking system for a tape measure.

Also, the Official Action rejects Claim 10 as being unpatentable over *Ljungberg et al.* in view of *Chapin*. Claim 10 generally defines that the switch is located on the top of the case. The Official Action acknowledges that *Ljungberg et al.* does not teach or suggest this feature, and relies on *Chapin* to remedy this deficiency. However, the tape measure of *Chapin* would not have directed one to modify the tape measure shown in *Ljungberg et al.* to include the operating member 22 on the top of the housing for the following reasons.

One skilled in the art would have recognized that the toggle 46 in *Chapin* is located on the top surface of the case to allow the lock shoe a "greater vertical travel than the prior art swing type lock shoes" without requiring any enlargement of the case. See column 2, lines 22-27. Because *Ljungberg et al.* does not use a "lock

shoe," there would have been no motivation to position the operating member 22 of *Ljungberg et al.* on the top of the case.

Also, modifying the tape measure shown in *Ljungberg et al.* to have the operating member 22 on the top of the case would defeat the purpose of *Ljungberg et al.*'s tape measure locking apparatus. The locking apparatus shown in *Ljungberg et al.* is designed so that the operating member 22 is parallel to the locking member 17 and has a V-shaped groove portion 25 in the operating member 22 that is perpendicular to the position of the locking member 17. The locking member 17 is perpendicular to the extended portion of the tape 6. As the operating member 22 toggles, the locking member 17 moves within the groove 25 and the locking member 17 is pulled against the tape 6, thereby locking the tape. If the operating member were positioned on the top of the case 3, the locking member 17 could not be positioned perpendicular to the tape 6 and also parallel to the operating member 22. Therefore, the suggested modification of *Ljungberg et al.*'s apparatus would not be operable and would therefore defeat the purpose.

The Official Action also rejects Claim 22 as being unpatentable over *Ljungberg et al.* in view of *Ingram, II et al.* and further in view of *Chapin*. It would not have been obvious to combine these references to arrive at the claimed invention for at least the reasons set forth earlier with respect to Claims 3 and 10-21.

Claim 11 depends from Claim 8 and, because the secondary references do not overcome the deficiencies of the rejection of Claim 8, is allowable for at least the reasons stated earlier with respect to Claim 8.

Claims 13-22 depend from Claim 12 and, because the secondary references do not overcome the deficiencies of the rejections of Claim 12, are allowable for at least the reasons stated earlier with respect to Claim 12.

**Conclusion**

For at least the reasons stated above, Claims 1-3 and 5-22 are allowable and it is therefore requested that all the rejections be withdrawn and that this application be allowed in a timely manner.

Should any questions arise in connection with this application, or should the Examiner feel that a teleconference with the undersigned would be helpful in resolving any remaining issues pertaining to this application, the undersigned respectfully requests that he be contacted at the number indicated below.

Respectfully submitted,

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